IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.147 OF 2005

Smt. Kantabai Vishwanath Shinde & Ors. ..Appellants

Versus

Smt. Shantabai Vishwanath Shinde & Anr. ..Respondents

Mr.S.D.Dharmadhikari for appellants

Mr.Milind Deshmukh for respondent nos.1 and 2

CORAM : P.V.KAKADE, J.

DATE : 27TH JUNE, 2005.

P.C.:

1. The appellants have preferred the present appeal against the judgment and order passed by Addl. District Judge, Pandharpur dated 6.9.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Malshiras dated 28.3.2003 decreeing the suit for declaration, partition and separate possession of the plaintiffs' share.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs came with the suit that Vishwanath (since deceased) was the last male owner of the property in dispute. He died in the year 1996. Plaintiffs claims themselves to be the legal heirs of deceased Vishwanath. Plaintiff No.1 claims to be his wife and plaintiff no.2 claims to be the son of the deceased. So far as the defendants are concerned they are legal heirs of the deceased Vishwanath. The learned trial judge adjudicated the dispute on the basis of evidence on record and came to the conclusion that the plaintiffs had proved that they are legal heirs of deceased Vishwanath. It was further held that the plaintiffs were entitled to partition and separate possession of the share in the suit property. It was further held that the defendants had failed to establish that they were the only legal heirs of deceased Vishwanath and as such the suit came to be decreed. The appeal was carried to the Addl. District Judge, Pandharpur. The learned District Judge after hearing both the parties dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that there is no substantial question of law involved in this appeal. The only issue was to the effect whether the plaintiffs were legal heirs of deceased Vishwanath. Both the courts below have come to the conclusion on evidence, both documentary as well as oral, that the plaintiff No.1 was wife of deceased Vishwanath and there was ample evidence to show that they had cohabited for several years. Witness Kamalabai, sister of plaintiff no.1, has also testified to the factum of marriage. Moreover, the school certificate of plaintiff no.2 also shows that deceased Vishwanath and plaintiff no.1 are the parents of the plaintiff no.2. This aspect coupled with absence of rebuttal evidence has established that the plaintiff no.1 was first wife of deceased Vishwanath. Therefore, on perusal of both the judgment shows that both the courts below have properly appreciated the entire evidence on record and there is no perversity involved therein and hence the appeal has no substance and as such stands dismissed.

. Consequently the civil application no.326 of 2005 also stands dismissed.

. Certified copy expedited.